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**SPEAKING IN OPPOSITION TO L.D. 1982**

**AN ACT TO ENSURE UNIFORMITY IN THE REGULATION OF PFAS**

**SPONSORED BY REP. ARATA**

**BEFORE THE JOINT STANDING COMMITTEE  
ON  
ENVIRONMENT AND NATURAL RESOURCES**

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Senator Tepler, Representative Doudera, and members of the Environment and Natural Resources Committee, I am Melanie Loyzim, Commissioner of the Department of Environmental Protection, speaking in opposition to L.D. 1982.

Despite its title, L.D. 1982 would not create uniformity in the regulation of PFAS, and it would exclude from regulation some PFAS that have been found in Maine's environment.

The proposed definition of PFAS in this bill would exclude several compounds that can be measured using commercially available laboratory methods. HFPO-DA and Adona have both

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been detected in groundwater at sites where sludge was land applied. Adona was measured in milk at a farm in Central Maine at 97.5 parts per trillion. 9CI-PF3ONS and 11CI-PF3OUdS are present in groundwater in Unity and at Portsmouth Naval Shipyard.

The definition of PFAS in L.D. 1982 would also exclude ultra-short chain PFAS compounds like Trifluoroacetic acid, a common degradation byproduct of longer-chain PFAS that has been found in precipitation. Ultra-short chain PFAS are more soluble in water and therefore more difficult to remove. Short-chain and ultra-short chain PFAS are also more widely used since PFOA and PFOS have been phased out. While these replacement PFAS are not as well understood, they are likely widespread in our environment.

L.D. 1982 would reduce the number of PFAS compounds that are covered by many laws that protect Maine property owners, including farmers, and prevent PFAS from continuing to contaminate Maine's environment.

- 7 MRS § 320-K – assists farmers with PFAS contaminated agricultural land
- 7 MRS §§ 604 and 606 – prohibits the sale of pesticides contaminated with PFAS or with intentionally added PFAS
- 32 MRS §§ 1732 and 1733 – authorizes DEP to prohibit PFAS in food packaging
- 35-A MRS § 3210-J – gives preference in renewable energy procurements to development of PFAS contaminated land
- 38 MRS § 413 – authorizes DEP to require wastewater discharge licensees to test for PFAS
- 38 MRS § 424-C – prohibits the sale of fire-fighting foam containing PFAS
- 38 MRS § 1304 – authorizes DEP to restrict land application of septage if it causes PFAS contamination
- 38 MRS § 1310-B-1 – authorizes DEP to test soil and groundwater for PFAS, and to mitigate contamination by providing safe drinking water
- 38 MRS § 1614 – prohibits PFAS in certain products

However, L.D. 1982 would not change the statute of limitations for a person to file an injury or damage claim related to PFAS contamination (14 MRS § 752-F), where "perfluoroalkyl or polyfluoroalkyl substances" would continue to mean any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

Now let's talk about regulation of PFAS by the U.S. Environmental Protection Agency (EPA). EPA does not use only one definition of PFAS. The PFAS definition proposed in this bill mirrors the definition used by EPA for implementation of the Toxic Substances Control Act (40 CFR Part 705), whereby EPA reviews the uses of chemicals in commerce and requires reporting and recordkeeping by manufacturers (including importers) of PFAS. However, this is not the only definition of PFAS used by EPA or the federal government. Like Maine, which PFAS are regulated by EPA depends on the purpose of each particular regulation. For example, the federal drinking water standard applies only to 6 specifically named PFAS. The hazardous substance listing applies to only 2 specific PFAS. Reporting to the Toxics Release Inventory is required for 16 specific PFAS.

The 2019 National Defense Authorization Act (NDAA) contained several different PFAS definitions that continue to direct federal actions. The NDAA required the Department of Defense to find alternatives to the use of PFAS in fire-fighting foam and other defense applications, and defined PFAS for that specific purpose in a way that differs from L.D. 1982:

*(1) The term "perfluoroalkyl substances" means aliphatic substances for which all of the H atoms attached to C atoms in the nonfluorinated substance from which they are notionally derived have been replaced by F atoms, except those H atoms whose substitution would modify the nature of any functional groups present.*

*(2) The term "polyfluoroalkyl substances" means aliphatic substances for which all H atoms attached to at least one (but not all) C atoms have been replaced by F atoms, in such a manner that they contain the perfluoroalkyl moiety  $C_nF_{2n+1}I$  (for example,  $C_8F_{17}CH_2CH_2OH$ ).*

The NDAA prohibited PFAS in meals ready to eat (MREs), also using a different definition of PFAS:

*(1) The term “perfluoroalkyl substance” means a man-made chemical of which all of the carbon atoms are fully fluorinated carbon atoms.*

*(2) The term “polyfluoroalkyl substance” means a man-made chemical containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms.*

The NDAA also directed the Department of Defense to enter cooperative agreements with states for treatment of drinking water contaminated with PFAS by DOD activities. For that purpose, PFAS is defined in the same way that PFAS is currently defined in Maine law:

*The term “PFAS” means perfluoroalkyl and polyfluoroalkyl substances that are man-made chemicals with at least one fully fluorinated carbon atom.*

It is this last federal definition that is being used by EPA to determine the scope of investigations and remediation at sites like the former Loring Air Force Base and Brunswick Naval Air Station.

Changing the definition of PFAS in Maine law will not achieve uniformity with federal laws and regulations. It will likely, however, protect some products from Maine’s sales prohibitions. The Department does not have sufficient information about all of the uses of PFAS in products to tell you which specific products would be exempted by this bill, but I suspect those who support this measure will help us to deduce that. If there are uses of PFAS that are economically important and do not create a risk to public health when those PFAS enter the environment, those uses should be evaluated directly rather than changing the scope of many of the Department’s authorities to test for and regulate PFAS.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions from the Committee, both now and at the work session.